

§ 3550.161

RHS debt will be subordinated may include:

- (1) The amount required to repay the RHS debt, exclusive of recapture;
- (2) Reasonable closing costs;
- (3) Up to one percent of the loan amount for loan servicing costs, if required by the lender; and
- (4) The cost of any necessary repairs or improvements to the security property.

(f) *Application for additional credit.* A borrower who has been asked to refinance with private credit will not be considered for additional credit until the refinancing issue is resolved unless such additional credit is necessary to protect the Government's interest.

§ 3550.161 Final payment.

(a) *Payment in full.* Full payment of a borrower's account includes repayment of principal and outstanding interest, unauthorized assistance, recapture amounts, and charges made to the borrower's account. Any supervised funds or funds remaining in a borrower's escrow account will be applied to the borrower's account or returned to the borrower.

(b) *Release of security instruments.* RHS may release security instruments when full payment of all amounts owed has been received and verified. If RHS and the borrower agree to settle the account for less than the full amount owed, the security instruments may be released when all agreed-upon amounts are received and verified. Security instruments will not be released until any deferred recapture amount has been paid in full.

(c) *Payoff statements.* At the borrower's request, RHS will provide a written statement indicating the amount required to pay the account in full. RHS may charge a fee for statements for the same account if more than 2 statements are requested in any 30 day period.

(d) *Suitable forms of payment.* Suitable forms of payment are: check, money order, or bank draft. Borrowers who make cash payments will be assessed a fee to cover conversion to a money order.

(e) *Recording costs.* Recording costs for the release of the mortgage will be the responsibility of the borrower, ex-

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cept where State law requires the mortgagee to record or file the satisfaction.

§ 3550.162 Recapture.

(a) *Recapture policy.* Borrowers with loans approved or assumed on or after October 1, 1979, will be required to repay subsidy amounts received through payment subsidy or deferred mortgage assistance. Amounts to be recaptured are due and payable when the borrower transfers title or ceases to occupy the property.

(b) *Amount to be recaptured.* (1) The maximum amount to be recaptured is the amount of principal reduction attributed to subsidy and the lesser of:

(i) The amount of subsidy received; or

(ii) 50 percent of the value appreciation.

(2) The value appreciation of property with a cross-collateralized loan is based on the market value of the dwelling and lot. If located on a farm, the lot size would be a typical lot for a single family housing property.

(3) Interest reduced from the promissory note rate to six percent under the Soldiers and Sailors Relief Act is not subject to recapture.

(c) *Option to defer payment of recapture amounts.* (1) Borrowers may defer payment of recapture amounts if the loan is repaid, the title does not transfer, and the borrower continues to occupy the property.

(2) The RHS mortgage securing the deferred recapture amount may be subordinated to permit refinancing if the RHS mortgage will be adequately secured.

(3) Borrowers eligible to defer recapture may receive a discount on the recapture amount due if the recapture amount is paid along with the final payment, or in the case of a final installment, within 60 days of the date RHS notifies the borrower that recapture may be due.

(d) *Borrower ceases to occupy the property.* When a borrower ceases to occupy a property:

(1) The borrower may pay the recapture amount in full or reamortize the existing loan to include the recapture amount.

(2) If the borrower does not pay the recapture amount or consent to re-amortization within 30 days, RHS may proceed with foreclosure.

(e) *Assumed loans.* (1) When a loan subject to recapture is assumed under new rates and terms, the recapture amount may be paid in full by the seller or included in the principal amount assumed by the buyer.

(2) When a loan is assumed under the terms of the promissory note, recapture amounts will not be due. When the new borrower transfers title or ceases to occupy the property, all subsidy subject to recapture before and after the assumption is due.

(3) When a borrower has deferred payment of recapture amounts, the deferred recapture amount may be included in the principal amount of the new loan.

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§ 3550.163 Transfer of security and assumption of indebtedness.

(a) *General policy.* RHS mortgages contain due-on-sale clauses that generally require RHS consent before title to a security property can be transferred with an assumption of the indebtedness. If it is in the best interest of the Government, RHS will approve the transfer of title and assumption of indebtedness on program or nonprogram (NP) terms, depending on the transferee's eligibility and the property's characteristics.

(b) *RHS approval of assumptions.* (1) A borrower with a loan on program terms who wishes to transfer a security property restricted by a due-on-sale clause to a purchaser who wishes to assume the debt must receive prior authorization from RHS. If RHS authorizes the transfer and assumption, the account will be serviced in the purchaser's name and the purchaser will be liable for the loan under the terms of the security instrument.

(2) If a borrower transfers title to the security property with a due-on-sale clause without obtaining RHS authorization, RHS will not approve assumption of the indebtedness, and the loan will be liquidated unless RHS determines that it is in the Government's best interest to continue the loan. If

RHS decides to continue the loan, the account will be serviced in the original borrower's name and the original borrower will remain liable for the loan under the terms of the security instrument.

(c) *Exceptions to due-on-sale clauses.* (1) Due-on-sale clauses are not triggered by the following types of transfers:

(i) A transfer from the borrower to a spouse or children not resulting from the death of the borrower.

(ii) A transfer to a relative, joint tenant, or tenant by the entirety resulting from the death of the borrower.

(iii) A transfer to a spouse or ex-spouse resulting from a divorce decree, legal separation agreement, or property settlement agreement.

(iv) A transfer to a person other than a deceased borrower's spouse who wishes to assume the loan for the benefit of persons who were dependent on the deceased borrower at the time of death, if the dwelling will be occupied by one or more persons who were dependent on the borrower at the time of death, and there is a reasonable prospect of repayment.

(v) A transfer into an inter vivos trust in which the borrower does not transfer rights of occupancy in the property.

(2) A transferee who obtains property through one of the types of transfer listed in paragraph (c)(1) of this section:

(i) Is not required to assume the loan, and RHS is not permitted to liquidate the loan, if the transferee continues to make scheduled payments and meet all other obligations of the loan. A transferee who does not assume the loan is not eligible for payment assistance or a moratorium.

(ii) May assume the loan on the rates and terms contained in the promissory note, with no down payment. If the account is past due at the time an assumption is executed, the account may be brought current by using any of the servicing methods discussed in subpart E of this part.

(iii) May assume the loan under new rates and terms if the transferee applies and is program-eligible.

(3) Any subsequent transfer of title, except upon death of the inheritor or